IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.704 OF 1994.

WITH

CIVIL APPLICATION NO.407 OF 2005

Vinayak Tukaram Bhalekar : Appellant.

versus

Packwell Plastics & Anr. : Respondents.

Mr.S.M.Dharap for the appellant.

Mr.Dilip Mahadik i/by S.R.Singh for respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 31st January 2005.

ORAL ORDER

1. So far as Civil Application is concerned, it is for restoration of the Appeal which was dismissed by me on 24.01.2005 as nobody was present for the appellant on that date.

Considering the explanation given, the Civil Application is allowed. Appeal is restored to file and, by consent, it is taken up for final hearing.

2. Heard the advocates for the appellant and the respondent- Insurance Company. This appeal is filed by the original workman/claimant against the impugned order on the ground that while awarding compensation to him, the Court did not take into consideration the special allowance payable to him.

3. Counsel for the appellant contended that, as provided by Sections 3 and 4 of the Minimum Wages Act, 1948, the wages of the appellant were supposed to include special allowance which the government was to fix every six months on the basis of Appendix annexed to the Notification No.MWA.5284/5740/LAB-7, dated 12th April 1984.

4. The questions, whether on the relevant date of accident any such notification was in existence; secondly, whether the government had fixed any special allowance for the class of workers of which the appellant belonged to and;

how much was the special allowance, are disputed by the counsel for the respondent. Therefore, in view of this matter and in view of these questions or question of facts, the impugned order is set aside for the following limited purposes. Hence the order :-

:ORDER:

The impugned order is set aside and the matter is remanded back to the Court only to consider, whether the appellant was entitled to the special allowance and, then whether there can be any excavation or enhancement of the compensation awarded to him.

Parties to appear before the concerned Authorities on 21.2.2005 and the Authorities will decide the matter within three months thereafter on the limited question.

It is clarified that the compensation already awarded and received by the

worker/appellant will not be affected by any order.

Writ to go immediately.

No order as to costs.

All concerned parties to act upon ordinary copy of this order duly authenticated by the Court Sheristedar.

[D.G.DESHPANDE]

31/01/2005 JUDGE.